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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,827	10/26/2001	Dan R. Radke JR.	2001-178	5050
7590 03/23/2004				
Steven N. Fox, Esq. P.O. Box 251 Canton, MA 02021				
EXAMINER VARGOT, MATHIEU D				
ART UNIT		PAPER NUMBER		
1732				

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/014,827

Applicant(s)

RADKE, DAN R.

Examiner

Mathieu D. Vargot

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

1. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1 and 6, lines 4 and 3, respectively, the language "3/4 inch minus" is indefinite as a way of expressing the size of the particles, as it is not clear exactly what the "minus" terminology refers to or what the instant "range" is. Applicant should rephrase this with language disclosed in the specification.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray -734 (col. 4, lines 49-53; col. 5, lines 12-14 and line 21) in view of either of Turner or British Patent 1,586,882.

Murray -734 discloses the basic claimed mixture of recycled scrap tire particles in suitable sizes in admixture with an epoxy binder, the binder and particles being mixed sufficiently so that the binder coats all the surfaces of the tire particles. Essentially, Murray -734 lacks a disclosure of employing recycled plastic flakes in the mixture and that the tire particles and recycled plastic flakes necessarily have different surface areas as recited in instant claim 1. Concerning the latter, the exact size of the particles, be they rubber or plastic, would have dependent on the exact grinding process as taught in Murray -734—see column 4, lines 49-53. In essence, while it is not explicitly shown

that the tire particles would be of different sizes, it is submitted that such would have been obvious to better fill a mold with the particulate. Ie, the smaller particles would allow better packing of the mold in that these would fill up spaces too small for the larger particles and henceforth allow for a more compact molding to be made, as is generally well known in the art. Either of Turner or British Patent –882 disclose mixtures and process of making same wherein the mixture is that of a reclaimed or recycled tire rubber and a plastic waste which has been ground into particles of suitable size. It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated plastic waste particulates in the mixture of the primary reference as taught by either of Turner or British –882 dependent on the porosity desired for the final product. As taught in both secondary references, the porosity of the product depends on the exact concentration of the rubber in the mixture—see British –882, page 2, lines 3-19 and Turner, column 2, lines 41-55, these passages also teaching rubber concentrations of 50-80%. Again, it is submitted that the exact sizes of the rubber and plastic particles used and their exact concentrations would have been within the skill level of the art and readily determined through routine experimentation dependent on the exact properties desired for the final product.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianne, can be reached on 571 272-1196. The fax phone

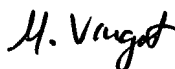
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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot  
March 15, 2004

  
Mathieu D. Vargot  
Primary Examiner  
Art Unit 1732

3/15/04